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Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
March 8, 2023 Session

**BRENDA LEE-PEERY v. METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY**

**Appeal from the Chancery Court of Davidson County
No. 19-1303-III Ellen Hobbs Lyle, Chancellor**

No. M2022-00551-COA-R3-CV

This is a breach of contract action brought by a nontenured teacher against the Metropolitan Government of Nashville and Davidson County (“Metro”) for nonrenewal of her teaching contract for the 2018–2019 school year. The teacher alleges that the nonrenewal of her yearly teaching contract was ineffective because the decision to nonrenew was improperly delegated by the Director of Schools to the principal. The school district contends that the decision to nonrenew is delegable and that the teacher lacks a private cause of action because the school district provided her with timely notice of her nonrenewal. The trial court summarily ruled in favor of the teacher, awarding her damages for breach of contract. The school district appeals, reiterating its same arguments. For the nonrenewal of a nontenured teacher to be effective, the proper authority must make the decision to nonrenew, and the school district must provide timely notice to the teacher. Because the decision to nonrenew requires the Director of Schools to exercise his or her independent judgment and discretion, the Director of Schools may not delegate this authority. In this case, the Director of Schools did not exercise his independent judgment and discretion in the decision to not renew the teacher’s contract; thus, the purported nonrenewal was ineffective. Accordingly, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

FRANK G. CLEMENT, JR., P.J., M.S., delivered the opinion of the court, in which W. NEAL MCBRAYER and CARMA DENNIS MCGEE, JJ., joined.

J. Brooks Fox and Benjamin A. Puckett, Nashville, Tennessee, for the appellant, Metropolitan Government of Nashville and Davidson County.

Richard L. Colbert, Nashville, Tennessee, for the appellee, Brenda Lee-Peery.

OPINION

FACTS AND PROCEDURAL HISTORY

From 2003 to 2013, Brenda Lee-Peery (“Lee-Peery”) worked as a teacher with Metro Nashville Public Schools (“MNPS”). Lee-Peery moved out of state in 2013 and left MNPS in good standing. After moving back to Tennessee, Lee-Peery returned to MNPS in 2014, and MNPS placed Lee-Peery as an interim teacher. For the 2015–2016 school year, MNPS employed Lee-Peery in interim positions as a substitute teacher then as a full-time teacher. From 2016–2018, MNPS placed Lee-Peery as a regular, full-time teacher at Haywood Elementary School.

During the spring of 2018, the MNPS human resources manager met with the principals in the district to determine budgets and staffing levels for the following school year. Once these determinations were made, the principals were responsible for making staffing recommendations for their respective schools.

On May 17, 2018, the Principal of Haywood Elementary School, Megan Galloway (“Principal Galloway”), informed Lee-Peery that her position had been cut from the 2018–2019 budget. Principal Galloway told Lee-Peery that she was welcome to apply for any open positions within MNPS. On May 30, 2018, Lee-Peery received a letter signed by Sharon Pertiller, the Executive Director of Human Resources, stating that Lee-Peery’s contract would not be renewed for the 2018–2019 school year. At the time of nonrenewal, Lee-Peery did not have tenure.¹

The decision to nonrenew Lee-Peery’s contract was made solely by Principal Galloway. Dr. Shawn Joseph—the Director of Schools for MNPS—was involved in the nonrenewal only to the extent that he reported to the Board of Education that nonrenewal letters had been mailed to employees.

Following the 2018–2019 school year, MNPS rehired Lee-Peery to teach during the 2019–2020 school year. Lee-Peery has remained employed with MNPS since that time.

In October of 2019, Lee-Peery commenced this breach of contract action against Metro for the nonrenewal of her teaching contract for the 2018–2019 school year. Lee-Peery contended that her nonrenewal was not effective because the decision was not made

¹ Lee-Peery attained tenure during her first stint with MNPS, but she lost her tenure when she moved out of state. In February of 2022, MNPS reinstated Lee-Peery’s tenure. Katherine Enterline, Director of Talent Management for MNPS, emailed Lee-Peery to explain that Lee-Peery’s tenure should have been reinstated during the 2017–2018 school year but was not because MNPS did not track tenure in their HR information system at that time.

by either the Director of Schools or the Board of Education. After the initial pleadings, both parties filed motions for summary judgment. The trial court granted Lee-Peery's Motion for Summary Judgment and denied Metro's Motion for Summary Judgment. Relying on statutory construction and the relevant caselaw governing the role of the director of schools, the trial court concluded:

[T]hat based upon statutory construction and case law the duty of the Director of Schools to nonrenew nontenured teachers is not delegable to a school's principal as was done in this case. Accordingly by not having the Director of Schools make the determination on the nonrenewal of Plaintiff's nontenured teacher contract, whose terms are that it is a continuing contract, Metro breached the contract

On April 22, 2022, the trial court entered final judgment for Lee-Peery and awarded her \$54,487.00 in back pay for the 2018–2019 school year, as well as 5.25% prejudgment interest.

This appeal followed.

ISSUES

Metro raises one issue on appeal:

1. Did the Trial Court err by not dismissing this action and by granting Plaintiff's motion for summary judgment instead?

Lee-Peery raises two issues on appeal:

1. Does a teacher who is purportedly dismissed by someone with no authority to dismiss her have a right of action for breach of her employment contract?
2. May the Director of Schools delegate to any subordinate he chooses his personnel responsibilities under Tenn. Code Ann. § 49-2-301(b)(1)(CC), including his responsibility for nonrenewing nontenured teachers?

STANDARD OF REVIEW

This Court reviews a trial court's decision on a motion for summary judgment *de novo* without a presumption of correctness. *Rye v. Women's Care Ctr. of Memphis, M PLLC*, 477 S.W.3d 235, 250 (Tenn. 2015). Accordingly, this court must make a fresh determination of whether the requirements of Tennessee Rule of Civil Procedure 56 have been satisfied. *Id.*; *Hunter v. Brown*, 955 S.W.2d 49, 50 (Tenn. 1997). In so doing, we accept the evidence presented by the nonmoving party as true, consider the evidence in the

light most favorable to the nonmoving party, and draw all reasonable inferences in that party's favor. *Godfrey v. Ruiz*, 90 S.W.3d 692, 695 (Tenn. 2002).

Summary judgment should be granted when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Tenn. R. Civ. P. 56.04. “The moving party has the ultimate burden of persuading the court that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law.” *Martin v. Norfolk S. R.R. Co.*, 271 S.W.3d 76, 83 (Tenn. 2008). “If the moving party bears the burden of proof on the challenged claim at trial, that party must produce at the summary judgment stage evidence that, if uncontroverted at trial, would entitle it to a directed verdict.” *TWB Architects, Inc. v. Braxton, LLC*, 578 S.W.3d 879, 888 (Tenn. 2019) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 331 (1986)).

“Issues of statutory construction are questions of law and shall be reviewed de novo without a presumption of correctness.” *Freeman v. Marco Transp. Co.*, 27 S.W.3d 909, 911 (Tenn. 2000). When construing statutes, this court bears in mind the following:

Our resolution of this issue is guided by the familiar rules of statutory construction. Our role is to determine legislative intent and to effectuate legislative purpose. The text of the statute is of primary importance, and the words must be given their natural and ordinary meaning in the context in which they appear and in light of the statute's general purpose. When the language of the statute is clear and unambiguous, courts look no farther to ascertain its meaning. When necessary to resolve a statutory ambiguity or conflict, courts may consider matters beyond the statutory text, including public policy, historical facts relevant to the enactment of the statute, the background and purpose of the statute, and the entire statutory scheme. However, these non-codified external sources “cannot provide a basis for departing from clear codified statutory provisions.”

Mills v. Fulmarque, Inc., 360 S.W.3d 362, 368 (Tenn. 2012) (citations omitted).

ANALYSIS

Tennessee Code Annotated § 49-5-409(a) (“Continuing Contract Law”) governs contracts for nontenured public school teachers. The statute reads:

Teachers in service and under the control of the public elementary or high schools of this state may continue in such service unless written notice is sent

to the teacher from the teacher's board of education or director of schools, as appropriate, of the teacher's dismissal or failure of reelection.

Id. The statute further directs that written notice of a decision to dismiss or failure to reelect must be sent to the teacher within five days "following the last instruction day for the school year." Tenn. Code Ann. § 49-5-409(b)(1).

Pursuant to the Continuing Contract Law, Tennessee employs nontenured public school teachers on annual contracts that renew automatically unless the teacher receives proper notice of nonrenewal. *Snell v. Brothers*, 527 S.W.2d 114, 115–16 (Tenn. 1975).² Failure to give proper written notice of nonrenewal to a teacher results in that teacher's "contract being continued one more year" and entitles the teacher to damages for breach of contract. *Id.* at 119; *see also Arwine v. Union Cnty. Bd. of Educ.*, 120 S.W.3d 804, 808 (Tenn. 2003) (citations omitted) (holding that legislative intent indicates that teacher employment is accomplished on a "year-to-year basis," not with multi-year contacts).

At the relevant times giving rise to this action, Lee-Peery was a nontenured teacher with MNPS. Accordingly, she worked under the Continuing Contract Law, which entitled her to automatic renewal of her teaching contract for one year unless she received proper written notice otherwise. *See Snell*, 527 S.W.2d at 119. For Lee-Peery's notice of nonrenewal to have been effective, the proper authority must make the nonrenewal decision, and the notice of that decision must have been timely. We consider each in turn.

I. PROPER AUTHORITY

Tennessee Code Annotated § 49-2-301³ provides that:

(b)(1) It is the duty of the board of education to assign to its director of schools the duty to:

(CC) Within the approved budget and consistent with existing state laws and board policies, employ, transfer, suspend, nonrenew and

² In 1975 when *Snell* was decided, the Continuing Contract Law was codified at Tennessee Code Annotated § 49-1306. While the language of the Continuing Contract Law has been amended since *Snell*, this court is satisfied that the minor amendments do not alter the substance of what is now Tennessee Code Annotated § 49-5-409(a).

³ Since this action accrued, the General Assembly has amended and renumbered Tennessee Code Annotated § 49-2-301, but the substance of the provisions at issue remains the same. For sake of convenience and clarity, we cite the version of the statute in effect as of the date of this opinion.

dismiss all personnel, licensed or otherwise, except as provided in § 49-2-203(a)(1) and in chapter 5, part 5 of this title.

Notably, Tennessee Code Annotated § 49-2-301(b)(1)(FF) states, “All actions of the directors or their designees shall be consistent with the existing board policies, rules, contracts and regulations.”

The key issue that guides our discussion is whether the Director of Schools can delegate his or her authority to nonrenew a nontenured teacher’s contract.

Metro argues that because Tennessee Code Annotated § 49-2-301(b)(1)(FF) says “directors or their designees,” the statute necessarily contemplates that “designees” can execute the director’s executive duties. Metro continues that the proximity of the phrase “directors or their designees” to the director’s nonrenewal powers in the same code section “evidence[s] the purpose, objective, and spirit behind the legislation to allow the director to delegate the tasks of nonrenewal of all nontenured personnel.”

Moreover, Metro emphasizes the language in Tennessee Code Annotated § 49-2-301(b)(1)(FF), stating that actions “shall be consistent with existing board policies” and highlights Metropolitan Nashville Board of Education Policy No 5.800. Policy No. 5.800 affords the director “discretion” to “delegate any of his/her duties to other school personnel.” Metro concludes that the statutory language “designees” and “shall be consistent with existing board policies” provides the Director of Schools with authorization to delegate the nonrenewal power.

Lee-Peery responds that the natural and reasonable interpretation of the statute is that the board must assign the duty to nonrenew to the director and nobody else. She posits that the legislature could have authorized the director to delegate this authority to a principal, but instead, the legislature confined the principal’s role to recommending dismissal. *See* Tenn. Code Ann. § 49-2-303(b)(3). Lee-Peery then emphasizes that the nonrenewal power cannot be delegated because it requires the exercise of judgment and discretion. Ultimately, Lee-Peery insists that Tennessee Code Annotated § 49-2-301 “is a directive to act in accordance with standards established by the board. It is not an authorization to the director to delegate whatever duties he may wish to whomever he may choose.”

We find that the Director of Schools may not delegate his or her power to nonrenew nontenured teachers. Tennessee Code Annotated § 49-2-301 neither expressly grants nor fairly implies that the Director of Schools has the authority to delegate the responsibility to exercise his or her independent judgment and discretion in deciding whether to nonrenew a nontenured teacher’s contract. The Director of Schools may delegate only the ministerial duties listed in the statute. The decision to nonrenew is non-ministerial because it requires the director to exercise his or her independent discretion and judgment. Relevant caselaw governing a municipal authority’s power to delegate and the structure of the pertinent

statutory schemes evidence the General Assembly’s intent to require a director to exercise the requisite discretion and judgment when nonrenewing a nontenured teacher in Tennessee.

First, the statute does not clearly state whether the director may delegate his or her nonrenewal power to a principal. Accordingly, to guide our decision, we turn to Dillon’s Rule, a canon of statutory construction that narrowly and strictly construes a local government’s authority. *See S. Constructors, Inc. v. Loudon Cnty. Bd. of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001). Dillon’s Rule in Tennessee establishes that “absent some indication to the contrary, the General Assembly must be presumed to have endowed local governments with only as much authority as it has granted through the language of its delegation.” *Id.* at 712. If there is no express language granting a local government certain powers, courts inquire into “whether that power is fairly implied from the powers expressly granted.” *Id.* at 716. If the power is “neither expressly granted nor fairly implied,” the question becomes whether the power is “essential” to the entity’s “declared objects and purposes.” *Id.* at 711 (citations omitted). Courts resolve any doubt regarding the power against the local government.⁴ *Id.* (citations omitted).

Tennessee Code Annotated § 49-2-301 does not expressly grant the Director of Schools the power to delegate his or her nonrenewal duty to a principal.⁵ Thus, in the absence of this express grant, we consider whether this delegation of authority is fairly implied. *See S. Constructors, Inc.*, 58 S.W.3d at 716.

Any fair implications of delegation can be found in the distinction between the kinds of duties listed in the statute. The duties listed in the statute can be categorized as ministerial or non-ministerial. The dividing line between the two is that the non-ministerial duties require the Director of Schools to exercise judgment and discretion. The exercise of judgment and discretion renders the nonrenewal authority nondelegable. “In Tennessee, the general rule is that municipal authorities may delegate ministerial or administrative duties, but they may not delegate their legislative duties, duties that require the exercise of discretion and judgment.” *Kelley v. Shelby Cnty. Bd. of Educ.*, 751 F. App’x 650, 654–55

⁴ For application of Dillon’s Rule, county boards of education are “county government entities exercising a governmental function” because they possess statutory authority with respect to public education. *Id.* at 715 (quoting *Reed v. Rhea Cnty.*, 225 S.W.2d 49, 50 (Tenn. 1949)).

⁵ Tennessee Code Annotated § 49-2-301(b)(1) states, “It is the duty of the board of education to assign to its director of schools the duty” The statute expressly grants the board the power to delegate, but this delegation power does not automatically transfer to the director. Thus, Metro’s contention that Lee-Peery conceded that the director can delegate the nonrenewal power to the principal because the Board of Education can delegate the nonrenewal power to the director is misguided.

(6th Cir. 2018) (citing *City of Rockwood v. Cincinnati, N.O. & T.P. Ry. Co.*, 22 S.W.2d 237, 240 (Tenn. 1929)); see also *Lotspeich v. Morristown*, 207 S.W. 719, 721–22 (Tenn. 1918); see also *Green Hills Neighborhood Ass’n v. Metro. Gov’t of Nashville*, No. M2014-01590-COA-R3-CV, 2015 WL 2393977, at *4 (Tenn. Ct. App. May 18, 2015) (recognizing that delegation of administrative functions does not contravene the general rule against delegating functions that require exercising discretion and judgment).

Tennessee Code Annotated § 49-2-301 fairly implies, and the parties agreed at oral argument, that directors may delegate ministerial⁶ functions to other personnel. However, deciding whether to nonrenew a nontenured teacher’s contract requires the exercise of judgment and discretion.⁷ Metro did not dispute this for purposes of summary judgment. Likewise, in their depositions, both Kay Stafford, a human resources manager with MNPS, and Melissa Bryant, the executive assistant to the directors of schools, agreed that the decision to nonrenew requires judgment and discretion.

In its Order granting summary judgment, the trial court outlined various considerations to be accounted for when deciding which teachers to nonrenew, stating:

If enrollment projections require that the number of teachers at the school be reduced, the school principal will then look at the various licensures held by the teachers in the school, ascertain training and education levels among teachers, consider program needs, look at staff experience, and take into account teaching quality and teacher evaluations in deciding what particular

⁶ Metro synonymizes ministerial with executive (and administrative) to describe the duties listed in Tennessee Code Annotated § 49-2-301. Both parties contemplate that the Education Improvement Act “implemented a corporate model of governance” within the public-school system. See *Lawrence Cnty. Educ. Ass’n v. Lawrence Cnty. Bd. of Educ.*, 244 S.W.3d 302, 310 (Tenn. 2007). Employing this mode of thinking, the director is an executive officer who answers to the board. *Id.* Metro thus construes that every action the director takes as an executive is executive in the sense that the action is ministerial or administrative. See *Rockwood*, 22 S.W.2d at 240. However, not every action of an executive is executive in that sense. Rather, executives regularly take actions that require judgment and discretion, as is the case with nonrenewal.

⁷ In footnotes, both parties reference dicta in the district court opinion for *Kelley v. Shelby Cnty. Bd. of Educ.*, 198 F. Supp. 3d, 842, 852 (W.D. Tenn. 2016) (“Absent tenure, employment decisions might be considered to be administrative, not legislative, for they would not be broadly applicable policy decisions, but rather decisions made for the purpose of carrying out an entity’s policy mission.”). To dispel any confusion, we believe that the Education Improvement Act and the Continuing Contract Law, both of which this action embraces, are decidedly public policy of Tennessee.

teacher is to be removed. The decision to nonrenew or lay off a teacher requires that the school principal exercise judgment and discretion.

These inquiries clearly establish that the decision to nonrenew is a complex one, requiring the evaluation of many substantive factors. The trial court highlights that the decision to nonrenew requires the principal to exercise judgment and discretion, and we agree. However, we wish to clarify that the ultimate decision is not the principal's; it is the director's. While principals can and should exercise judgment and discretion in the role they play in the nonrenewal process, the onus is on the director to exercise his or her independent judgment and discretion in making the ultimate nonrenewal decision.

The power to delegate the nonrenewal function is neither expressly granted nor fairly implied, and neither party argues that it is "essential" to achieving the object and purpose of the statute. Thus, the director cannot delegate the ultimate decision to nonrenew under Tennessee law.

For completeness, we shall also consider the statutory scheme of the Education Improvement Act. Tennessee Code Annotated §§ 49-2-301 and 49-2-303 relate to the same subject matter and have a common purpose: establishing the respective duties of the principal and director. The statutes must accordingly be read *in pari materia*. See *Donovan v. Hastings*, 652 S.W.3d 1, 8 (Tenn. 2022). Tennessee Code Annotated § 49-2-303(b)(3) authorizes principals to "[s]ubmit recommendations to the director of schools regarding the appointment and dismissal of all personnel assigned to the school." Read in conjunction with Tennessee Code Annotated § 49-2-301(b)(1)(CC), which is reproduced above, the principal's role in dealing with appointing and dismissing is confined to recommendations, whereas the director has the authority to nonrenew, suspend, dismiss, etc. These two statutes, taken together, evidence the purpose of the statute: It is the director's responsibility to nonrenew. Disregarding the principal's enumerated duty to make recommendations regarding a teacher's employment status in favor of letting the principal nonrenew a teacher would render Tennessee Code Annotated § 49-2-303(b)(3) superfluous. See *Tidwell v. Collins*, 522 S.W.2d 674, 676–77 (Tenn. 1975) (explaining that statutes should be construed so that no part of it will be superfluous). Further, it can be adduced that because the General Assembly expressly included "recommending," they purposefully excluded other responsibilities. See *Amos v. Metro. Gov't of Nashville and Davidson Cnty.*, 259 S.W.3d 705, 715 (Tenn. 2008) (applying *expressio unius est exclusio alterius*).

Tennessee Code Annotated § 49-2-303(b)(5) does authorize the principal to "[p]erform such other duties as may be assigned by the director of schools pursuant to the written policies of the local board of education." However, the director cannot assign the

nonrenewal duty because that duty requires that the director exercise his or her independent judgment and discretion.

And while Tennessee Code Annotated § 49-2-301(b)(1)(FF) indicates a need for consistency with school board policy, we need not rely on school board policy in this case. School board policy cannot be a vehicle through which the school contravenes statutory authority. School board policy cannot grant power that contradicts the statute.⁸

Here, Principal Galloway independently made the decision to nonrenew Lee-Peery, and it is undisputed that the then Director of Schools, Dr. Joseph, was not involved in the decision-making process. The extent of Dr. Joseph's involvement was informing the board that nonrenewal letters had been sent out. This minuscule and ministerial function taken after the nonrenewal decision had been made cannot be seen as Dr. Joseph having exercised his independent judgment and discretion to nonrenew under Tennessee Code Annotated § 49-2-301.

To be sure, the director does not need to be the sole person involved in making the decision to nonrenew, and the director can have a minimal role in the process. Directors may even be well-advised to solicit the advice and recommendations of the principal in making the decision to nonrenew. However, the director must exercise his or her independent judgment and discretion in making the ultimate decision to nonrenew.

For the reasons stated above, Principal Galloway lacked the authority to make the ultimate decision to nonrenew Lee-Peery's contract.

II. Timely Notice

Even if the duty to nonrenew is nondelegable, Metro insists that the Continuing Contract Law does not provide Lee-Peery with an implied private cause of action because the notice of nonrenewal was timely. Lee-Peery counters that she "did not assert an implied private right of action under the Continuing Contract Law," but rather, she premises her breach of contract claim on the ground that she was not "lawfully dismissed."

Metro principally relies on *Mosby v. Fayette Cnty. Bd. of Educ.*, No. W2019-01851-COA-R3-CV, 2020 WL 4354905 (Tenn. Ct. App. July 29, 2020), and *Parker v. Lowery*, No. E2012-00547-COA-R3-CV, 2013 WL 1798958 (Tenn. Ct. App. Apr. 26, 2013), to

⁸ In arguing that we must look to school board policy, Metro cites to *Bailey v. Blount County Bd. of Educ.*, 303 S.W.3d 216 (Tenn. 2010). However, *Bailey* is distinguishable in that the Court relied on school board policy to ensure that the dismissed teacher's procedural due process rights had been satisfied and to understand what rights had been afforded to the dismissed teacher in that situation. *Id.* at 228.

support its proposition. As Lee-Peery aptly points out, *Mosby* and *Parker* are inapposite with the case at bar.

The *Mosby* Court held that the nontenured teacher lacked a private cause of action under the Continuing Contract Law because the *director* had given the teacher timely notice of nonrenewal. 2020 WL 4354905, at *5 (emphasis added). Despite the teacher's argument to the contrary, the *Mosby* Court relied on the director's testimony that he made the final decision regarding the teacher's nonrenewal. *Id.* at *2 n.3. In *Parker*, the court found that the nontenured teacher in that case lacked standing because the *director* had given the teacher timely notice of his decision not to renew. 2013 WL 1798958, at *5 (emphasis added). Neither case turned on the director's improper delegation of authority.

We are cognizant that “timely notice of nonrenewal is the ‘essence of the thing to be accomplished’ by the Continuing Contract Law.” *Dallas v. Shelby Cnty. Bd. of Educ.*, 603 S.W.3d 32, 50 (Tenn. Ct. App. 2019) (quoting *Emory v. Memphis City Sch. Bd. of Educ.*, 514 S.W.3d 129, 144 n.11 (Tenn. 2017)). Nonetheless, as this court noted, timing is “nearly the sole protection offered to nontenured teachers.” *Id.* at 51 (emphasis added). The other protection offered to nontenured teachers in decisions to nonrenew is that the decision to nonrenew cannot otherwise be prohibited by law. *Cannon Cnty. Bd. of Educ. v. Wade*, No. M2006-02001-COA-R3-CV, 2008 WL 3069466, at *11 n.15 (Tenn. Ct. App. July 31, 2008) (recognizing that a teacher could challenge a nonrenewal on the basis that it violated state statutes). Ultimately, the five-day cutoff in Tennessee Code Annotated § 49-5-409(b) is “mandatory,” *see Dallas*, 514 S.W.3d at 52, but it is not the exclusive requirement for notice to be effective under the Continuing Contract Law. For a nonrenewal notice to be effective, the proper authority must make the decision to nonrenew, and under Tennessee Code Annotated § 49-2-301(b)(1)(CC), the director is the proper authority. Timeliness of notice cannot validate an otherwise invalid nonrenewal.

The parties do not dispute that the “notice of nonrenewal” was timely. However, as outlined above, timeliness is just one element of effective nonrenewal. Because the decision to nonrenew was not made by the Director of Schools, the timeliness of the notice is irrelevant for the purposes of this appeal.

As a matter of law, MNPS did not properly nonrenew Lee-Peery, so her contract automatically renewed for one year under the Continuing Contract Law. By failing to

employ Lee-Peery, MNPS breached its contract with Lee-Peery. As a result, Lee-Peery is entitled to damages.

For the foregoing reasons, we affirm the trial court.

IN CONCLUSION

The judgment of the trial court is affirmed, and this matter is remanded with costs of appeal taxed against the appellant, Metropolitan Government of Nashville and Davidson County.

FRANK G. CLEMENT JR., P.J., M.S.